

NO. 25826

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

EMERSON
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 JUL 27 AM 8:31

FILED

VICKIE M. PEILER, Plaintiff-Appellee, v. GLENN I. YOGI,
Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(FC-Domestic Abuse No. 03-1-0071)

SUMMARY DISPOSITION ORDER
(By Burns, C.J., Lim and Fujise, JJ.)

Respondent-Appellant Glenn I. Yogi (Yogi) brings this appeal from the "Order for Protection" filed on March 18, 2003 and the "Order Denying Without Hearing Defendant Yogi's Motion for Reconsideration of the Order for Protection Filed March 18, 2003" filed on May 2, 2003.

After diligently reviewing the record and the briefs submitted and carefully considering the issues raised, arguments advanced, and the applicable law, we resolve Yogi's points of error as follows:

1. The family court^{1/} had jurisdiction over this protective order case. The family court has exclusive original

^{1/} The Honorable Matthew J. Viola presided.

jurisdiction over petitions for protective orders, brought under Hawaii Revised Statutes (HRS) Chapter 586, by a family or household member. HRS §§ 571-14(8), 586-3 (1993). A "[f]amily or household member" includes, without temporal limitation, those "persons jointly residing or formerly residing in the same dwelling unit." HRS § 586-1 (1993). Yogi admitted that he and Petitioner-Appellee Vickie M. Peiler (Peiler) had been cohabitants until May 24, 1994 and Peiler testified that she and Yogi had lived together for two years, "from 1992 to 1994," and has not established that application of the plain language definition of household member yields an absurd result, Iddings v. Mee-Lee, 82 Hawai'i 1, 15, 919 P.2d 263, 277 (1996), in light of the fact that the Senate clearly stated it was not its intent to have a case dismissed solely upon time elapsed (Sen. Comm. Rep. No. 2443, in 2000 Senate Journal at 1007-10).

2. The family court did not abuse its discretion in "failing to continue" the hearing on the petition. Coyle v. Compton, 85 Hawai'i 197, 209, 940 P.2d 404, 416 (App. 1997). Neither Yogi nor his counsel moved for a continuance, nor did either express below the reason they now advance as a justification for the third continuance of the hearing: that had they been given a continuance, Yogi "would not be silenced by having to assert his constitutional right not to incriminate

himself." While we could reject this point solely for the failure to preserve it below, HRS § 641-2 (Supp. 2004), a review of the record leads us also to conclude that Yogi suffered no injury to substantial rights, see New York City Com'r. of Social Services ex rel. Jason C. v. Elminia E., 521 N.Y.S.2d 283 (N.Y. App. Div. 1987), in that an order for protection was not automatic upon his failure to testify at the hearing on the instant petition and he was able to, and did, present other evidence in his own behalf.

3. Finally, there was no abuse of discretion in summarily denying Yogi's motion for reconsideration. The "newly discovered evidence" proffered by Yogi and relied upon by him on appeal, is nothing more than the stark, unexplained, order dismissing the criminal charges against him that involved alleged violations of a previous protective order obtained by Peiler. Yogi does not show how such a document is relevant to the issuance of the protective order at issue, as a dismissal of criminal charges does not, without more, make any of the facts that are of consequence to the issuance of the protective order more, or less, probable. Hawai'i Rules of Evidence, Rules 401, 402 (1993).

Therefore,

IT IS HEREBY ORDERED that the March 18, 2003 "Order for Protection" and the May 2, 2003 "Order Denying Without Hearing

NOT FOR PUBLICATION

Defendant Yogi's Motion for Reconsideration of the Order for Protection Filed March 18, 2003" are affirmed.

DATED: Honolulu, Hawai'i, July 27, 2005.

On the briefs:

Craig K. Furusho,
for Defendant-Appellant.


Chief Judge

Vickie M. Peiler,
Pro Se Plaintiff-Appellee.



Associate Judge


Associate Judge